

EMPIRICAL STUDIES OF COPYRIGHT LITIGATION

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ABSTRACT

This essay summarizes the current state-of-the-art in the application of observational empirical tools to the study of copyright litigation. As a field, Empirical Legal Studies (or ELS) is relatively young, and the subfield of ELS applied to copyright litigation is in its infancy. The existing literature can be classified into three subcategories: studies of judicial behavior, studies of filing data and the day to day life of copyright litigation, and studies of particular aspects of copyright doctrine. Because the field is so small, this essay summarizes and evaluates all of the extant literature. It concludes with three guidelines for researchers planning to undertake an empirical study of copyright litigation. These guidelines or best practices relate to (1) the importance of open data, (2) the need to take selection effects seriously without abandoning empirical studies of litigation altogether (3) understanding that the future is out of sample—i.e., that empirical analysis may well identify patterns in a given data set, but that predictions about the future are *arguments* based on empirical conclusions, they are *not empirical conclusions* themselves.

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